POLICY NOTE

THE ENVIRONMENTAL PROTECTION (INJURIOUS ARTICLES) (FIXED PENALTY NOTICES AND MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2025

SSI 2025/28

The above instrument was made in exercise of the powers conferred by sections 140(1)(b) and (c), (3)(c) and (d) and (9) of the Environmental Protection Act 1990. The instrument is subject to negative procedure.

Summary Box

This instrument amends the coming into force date of the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 from 1 April 2025 to 1 June 2025, and makes other minor amendments to those Regulations. It also provides enforcement officers with the power to issue fixed penalty notices for offences committed under the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024, the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021, the Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 and the Environmental Protection (Microbeads) Regulations 2018.

Policy Objectives

The Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 ("the Vapes Regulations") prohibit the sale and supply of single-use vapes in Scotland. The Scottish Parliament approved the Vapes Regulations on 25 September 2024, which were signed into law on 1 October 2024. They are scheduled to come into force on 1 April 2025. Similar legislation has been introduced in England, Wales and Northern Ireland. A coming into force date of 1 April 2025 had previously been agreed upon by the four UK Nations so as to ensure alignment.

Due to the impact of the 2024 UK General Election, the UK Government was unable to meet the 1 April 2025 coming into force date for their regulations. A new coming into force date of 1 June 2025 was agreed at a four nations level and included in the English, Welsh and Northern Irish Regulations. As the Scottish Regulations had been made prior to this change of date, they currently come into force on 1 April 2025 as previously agreed. This amendment will change the coming into force date of the Vapes Regulations to 1 June 2025, to ensure alignment across UK nations.

The regulations also amend the Vapes Regulations to correct a minor typographical error and clarify certain of the powers which may be utilised by an enforcement officer when investigating an offence under the Vapes Regulations.

In addition, these regulations amend the:

- Environmental Protection (Microbeads) (Scotland) Regulations 2018
- Environmental Protection (Cotton Buds) (Scotland) Regulations 2019
- Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021
- Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024

so as to provide a fixed penalty notice (FPN) procedure in relation to certain offences under those regulations as an alternative to criminal prosecution. The amendments to the Vapes regulations will also provide that the Scottish Ministers may issue a direction that single-use vapes supplied in the course of an offence under the regulations are to be treated as waste and disposed of or treated in accordance with the direction. This would apply to any single-use vapes in respect of an FPN has been issued, and the fixed penalty paid.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Environmental Protection (Injurious Articles) (Fixed Penalty Notices and Miscellaneous Amendments) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

There is currently no EU legislation banning the sale or supply of single-use vapes, meaning there are no EU alignment consequences as a result of this instrument. Interventions by individual EU member states, with the sale of disposable e-cigarettes banned in Belgium from 1 January 2025, indicate no detrimental impact as a result of this instrument on the Scottish Government's policy to maintain alignment with the EU where possible and meaningful to do so.

The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 and Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 bring the Scottish Government into partial alignment with article 5 of the EU Directive 2019/904 on the reduction of the impact of certain plastic products on the environment. The Environmental Protection (Microbeads) (Scotland) Regulations 2018 pre-date, but align with, action taken at the EU-level in 2023 in respect of the use of micro-plastics in cosmetics, personal care products and detergents. The addition of an FPN procedure as an enforcement tool in these regulations does not impact upon that alignment and these is no detrimental

impact as a result of the amendments made by this instrument on the Scottish Government's policy to maintain alignment with the EU where possible and meaningful to do so.

Consultation

In accordance with section 140(6) of the Environmental Protection Act 1990, notifications were published in the Edinburgh and London Gazettes as to the Scottish Ministers intention to introduce these regulations, and views were sought on the draft regulations in general, and in particular the approach to the FPN element of these regulations through the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 - fixed penalty notice amendment: consultation[1] which ran from 9 December 2024 to 9 January 2025. We received 25 responses to this consultation, 11 from individuals and 14 from organisations, with these being primarily Local Authority Trading Standards who are responsible for the enforcement of each of the instruments to be amended by these regulations. These responses were taken into account in finalising the regulations, including the addition of the direction-making provision in the Vapes Regulations. We will publish the government response to the consultation in February 2025.

Officials have also engaged with The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and The Convention of Scottish Local Authorities (COSLA) on enforcement requirements and to inform the introduction of FPNs.

Impact Assessments

The following impact assessments have been completed to evaluate the likely impacts of the policy.

- A Child Rights and Wellbeing Impact Assessment (CRWIA) has been completed and will be published in February 2025.
- Business and Regulatory Impact Assessment (BRIA) for the proposed prohibition on the sale and supply of single-use vapes in Scotland, published on 10 June 2024[2].
- Prohibition of the sale and supply of single-use vapes: Island Communities Impact Screening Assessment (ICIA), published on 10 June 2024[3].
- Prohibition of the sale and supply of single-use vapes: Equality Impact Assessment (EQIA), published on 10 June 2024[4].

[1] https://consult.gov.scot/environment-forestry/environmental-protection-injurious-articles-fixe/
[2] https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-full-business-regulatory-impact-assessment/
[3] https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-island-communities-impact-screening-assessment-2/
[4] https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-equality-impact-assessment-results/pages/3/

- Prohibition of the sale and supply of single-use vapes: Fairer Scotland Duty Summary (FSDA), published 10 June 2024[5].
- Prohibition of the sale and supply of single-use vapes: Child Rights and Wellbeing Impact Assessment (CRWIA) Stage 2, published 10 June 2024[6].
- Prohibition of the sale and supply of single-use vapes: strategic environmental assessment (SEA) - environmental report, published 2 April 2024[7].
- Business and Regulatory Impact Assessment (BRIA) for The Environmental Protection (Microbeads) (Scotland) Regulations 2018[8].
- Business and Regulatory Impact Assessment (BRIA) for The Environmental Protection (Cotton Buds) (Scotland) Regulations 2019[9][10].
- Business and Regulatory Impact Assessment, Fairer Scotland Duty Impact Assessment, Island Communities Impact Assessment, Strategic Environment Assessment and Equality Impact Assessment for the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021[11].

Financial Effects

It is not anticipated that this policy will have any significant financial effects, and as such a Business and Regulatory Impact Assessment has not been completed for this instrument.

Business and Regulatory Impact Assessments have been completed for the Single-use Vapes Regulations (2024), Microbeads Regulations (2018), Cotton Buds Regulations (2019), and Single-use Plastic Products Regulations (2021), as referenced in the previous section.

Scottish Government
Environment and Forestry Directorate

January 2025

[5] https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-fairer-scotland-duty-summary/

[6] https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-child-rights-wellbeing-impact-assessment-crwia-stage-2/

[7] https://www.gov.scot/publications/prohibition-sale-supply-single-use-vapes-strategic-environmental-assessment-environmental-report/

[8] https://www.legislation.gov.uk/ssi/2018/162/pdfs/ssifia_20180162_en.pdf

[9] https://www.legislation.gov.uk/ssi/2019/271/pdfs/ssifia_20190271_en.pdf

[10] For the Microbeads and Cotton Buds Regulations it was determined that a full EQIA was not required. These were the only IAs required at the time of publishing.

[11] https://www.legislation.gov.uk/ssi/2021/410/resources